

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARSHALL V. SANDUSKY and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Louisville, KY

*Docket No. 03-601; Submitted on the Record;
Issued July 24, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a five percent impairment to his left lower extremity for which he received a schedule award.

This is the fourth appeal in the present case.¹ On the first appeal, the Board found that the opinion of the referral physician, Dr. Frank A. Burke, a Board-certified orthopedic surgeon, was incomplete and equivocal and, therefore, set aside the Office of Workers' Compensation Programs' November 24, 1998 decision and remanded the case for the Office to obtain a complete evaluation regarding whether appellant had a permanent impairment of his left lower extremity. In the second appeal, the Board found that the opinion of the referral physician, Dr. Robert L. Keisler, a Board-certified orthopedic surgeon, was unclear and equivocal and therefore, set aside the Office's August 29, 2000 decision and remanded the case to the Office to obtain clarification from Dr. Keisler or, in the alternative, to refer appellant to another appropriate specialist for evaluation. In the third appeal, the Board found that Dr. Keisler's October 24 and November 7, 2001 reports were equivocal and speculative and, therefore, set aside the Office's December 18, 2001 decision and remanded the case for the Office to obtain a medical opinion from another second opinion physician regarding whether appellant had any work-related permanent partial impairments.

In a report dated November 5, 2002, the referral physician, Dr. Billy J. Parson, an orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed an S1 sensory deficit secondary to L1-S1 disc herniation with radiculopathy and residual despite postsurgical decompression.

¹ Docket No. 02-798 (issued August 5, 2002); Docket No. 01-56 (issued July 26, 2001); Docket No. 99-904 (issued May 22, 2000). The facts and history surrounding the prior appeals are set forth in the initial three decisions and are hereby incorporated by reference.

In another report dated November 5, 2002, Dr. Parson stated that appellant had a permanent sensory loss in the dermatome pattern of S1 distribution. He stated that the impairment rating of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Table 17-37, page 552, was one percent. He stated that, pursuant to the A.M.A., *Guides* (4th ed. 1995), Table 68, page 89, appellant had a rating of one percent for sensory loss for the whole body, and a two percent permanent impairment to the left lower extremity.

In a medical report dated November 20, 2002, the district medical adviser stated that appellant had sensory loss in the left lower extremity in the S1 dermatome. He stated that, pursuant to the A.M.A., *Guides* (5th ed. 2001), Table 15-18, page 424, appellant had a five percent permanent impairment for an S1 sensory loss in the left lower extremity.

By decision dated November 22, 2002, the Office issued a schedule award for a five percent impairment to the left lower extremity.

The Board finds that appellant is not entitled to more than a five percent permanent impairment to his left lower extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

It is unclear how Dr. Parson obtained his rating of one percent to appellant's left lower extremity. Although Dr. Parson cited Table 17-37, page 552 of the A.M.A., *Guides* (5th ed. 2001), he did not identify the nerve he used to identify the degree of impairment and Table 17-37 does not have a sensory impairment for one percent of the lower extremity. Further, Dr. Parson's opinion that appellant had a total permanent impairment of two percent to his left lower extremity is not proper because the Office's decision was issued after February 1, 2001, and therefore the fourth of edition of the A.M.A., *Guides* is not applicable.⁵ Dr. Parson's opinion is therefore of diminished probative value.

The district medical adviser stated that, pursuant to Table 15-18, page 424, of the A.M.A., *Guides* (5th ed. 2001), appellant's sensory loss in the S1 dermatome is five percent. By

² 5 U.S.C. § 8107 *et seq.*

³ 20 C.F.R. § 10.404.

⁴ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001). The bulletin states that the A.M.A., *Guides* (5th ed. 2001) are applicable effective February 1, 2001.

grading the severity of the sensory loss under Table 15-15, page 424, one obtains 100 percent. Applying a 100 percent sensory loss to Table 15-18, page 424, for an S1 sensory defect or pain yields 5 percent. The district medical adviser therefore properly determined that appellant had a five percent impairment to his left lower extremity. No evidence of record shows that appellant had greater than a five percent impairment to his left lower extremity.

The November 22, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 24, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member